

No. 10345

16

United States
Circuit Court of Appeals
For the Ninth Circuit.

FARM PRODUCTS CO., a corporation,
Appellant.

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

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PAUL P. O'BRIEN.
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States in and
For the Southern District of California

Central Division

In Bankruptcy

No. 41247-RJ

In the Matter of

FARM PRODUCTS CO.

Debtor.

PETITION OF FARM PRODUCTS CO.
UNDER SECTION 75 OF THE BANK-
RUPTCY ACT

To the Honorable Judges of the District Court
of the United States for the Southern District of
California, Central Division:

The petition of Farm Products Co., a corpora-
tion, of 117 West Ninth Street in the City of Los
Angeles, County of Los Angeles, State of Cali-
fornia, respectfully represents:

That your petitioner is a corporation, organized
and existing under and by virtue of the law of
California, whose principal and only business is
producing products of the soil and engaged in
farming within the County of Los Angeles, State
of California, in the district and division aforesaid.
That all of the stockholders of your petitioner,
Farm Products Co., are persons whose entire time
is engaged and whose incomes and each of them
are more than seventy five per cent (75%) from
their activities and endeavors in producing products

of the soil and farming. That such farming operations of your petitioner, Farm [2] Products Co. and that of each of its stockholders, occur in the County of Los Angeles, State of California, where your petitioner is operating a farm consisting of approximately Four Hundred Fifty (450) acres, more or less, cropping the same at the present time to cauliflower, cabbage, Kentucky Wonder beans, cucumbers, summer squash; that your petitioner is unable to meet his debts as they mature; that your petitioner desires to effect an extension of time to pay his debts under Section 75 of the Bankruptcy Act.

That the schedule hereto annexed and marked Exhibit "A", and verified by your petitioner's oath, contains a full and true statement of all of its debts, and the names and places of residence of its creditors.

That the schedule hereto annexed and marked Exhibit "B", and verified by your petitioner's oath, contains an accurate inventory of all of its property and assets, both real and personal and such further statements concerning said property as are required by law.

That at the time of the filing of this petition, your debtor is in actual possession of and operating its properties in the County of Los Angeles and within the district and division aforesaid, in the State of California.

That on August 17, 1942, an action was commenced in this court in which the plaintiff was

and is the United States of America and the defendant therein is your petitioner, Farm Products Co.; that said action is a civil action known and numbered in the files of this court as 2371-RJ Civil, and is one brought to foreclose a chattel mortgage and for the appointment of a temporary receiver and for the appointment of a permanent operating general receiver. That in said action, your petitioner has been served but has not answered, the time for answering having not yet expired. That in said proceeding [3] 2371-RJ, the court, by the Honorable G. E. Beaumont, United States District Judge, has made its order appointing Carl J. Williams, Rural Rehabilitation Supervisor, United States Department of Agriculture, Farm Security Administration, as temporary receiver. That said receiver may have qualified by the time this petition is filed, but at the time of the making of this petition, he had not taken possession of the properties of your petitioner, nor otherwise asserted his authority.

That your petitioner, Farm Products Co., has elected to take for the benefit of itself and its creditors, the rights, remedies and protection afforded by Section 75 of the Bankruptcy Act, and has authorized the filing of these proceedings by action duly had in that behalf as more fully appears by the certified copy of the resolution as made by your petitioner attached hereto, marked Exhibit "C".

Wherefore, your petitioner prays that this petition may be approved by the court and proceedings had in accordance with the provisions of said action.

[Seal]

FARM PRODUCTS CO.,

a corporation

By FRED MANSUR,

President.

RUPERT B. TURNBULL,

Petitioner, Farm Debtor. [4]

State of California

County of Los Angeles—ss.

I, Fred Mansur, duly authorized to make this verification and President of Farm Products Co., a corporation, the petitioning debtor mentioned and described in the foregoing petition, hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

[Seal]

FARM PRODUCTS CO.,

a corporation,

Petitioner.

FRED MANSUR

President.

Subscribed and sworn to before me this 24 day of August, 1942.

[Seal]

MARGARET BARNEY

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Aug. 24, 1942. [5]

[Title of District Court and Cause.]

CERTIFICATE OF RECORD ON REVIEW

I, C. P. Von Herzen, Conciliation Commissioner in Bankruptcy, at Los Angeles, California, respectfully certify that the above entitled bankruptcy proceeding is pending before me under a general order of reference, and I hereby certify the following proceedings were duly had in said cause before me.

A motion to dismiss proceedings and to vacate stay of proceedings in the Federal Court by secured creditor United States of America came on regularly for hearing on the 17th day of September, 1942. The secured creditor appeared by Assistant United States Attorney Mildred L. Kluckhohn and the debtor appeared by its President, Fred Mansur personally, and through its attorney Rupert B. Turnbull. The following question was presented to me for decision: Whether the farm debtor herein was a farmer within the intent and meaning of Subsection R of Section 75 of the Bankruptcy Act, which reads as follows:

“For the purposes of this section, Section 4(b), and Section 74, the term ‘farmer’ includes not only an individual who is primarily bona fide personally [6] engaged in producing products of the soil but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representatives of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur.”

That attached hereto and made a part hereof are the Findings of Fact and Conclusions of Law duly made and entered herein by me upon the foregoing hearing; that attached hereto and made a part hereof is a copy of the Order duly made and entered herein.

I hereby certify that in the proceedings that have been pending before me I have determined that the petitioner was not a farmer within the intent and meaning of Subsection R of Section 75 of the Bankruptcy Act.

Submitted herewith are the following documents:

(1) Notice of motion and motion to dismiss proceedings and to vacate stay of proceedings in the Federal Court by secured creditor United States of America;

(2) Findings of Fact and Conclusions of law by C. P. Von Herzen, Conciliation Commissioner, dated October 14, 1942;

(3) Order dismissing proceedings and vacating stay of proceedings in Federal Court dated October 14, 1942;

(4) Objections by farm debtor to proposed findings and orders;

(5) Farm debtor's petition for review of the order of Conciliation Commissioner C. P. Von Herzen purporting to dismiss this proceedings.

C. P. VON HERZEN

Conciliation Commissioner
in Bankruptcy

[Endorsed]: Filed Oct. 24, 1942. [7]

[Title of District Court and Cause.]

SPECIAL APPEARANCE

Comes now the United States of America, a secured creditor of Farm Products Co., the above named debtor, in the above entitled proceeding, and enters its special appearance herein and appears specially for the sole purpose of making a Motion to Dismiss the above entitled proceedings and to Vacate Stay of Proceedings in Federal Court.

Dated this 12th day of September, 1942.

LEO V. SILVERSTEIN

United States Attorney

JAMES L. CRAWFORD

Asst. United States Attorney

MILDRED L. KLUCKHOHN

Asst. United States Attorney

[Endorsed]: Filed Jan. 5, 1943. [8]

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS PROCEEDINGS AND TO VACATE STAY OF PROCEEDINGS IN FEDERAL COURT BY SECURED CREDITOR, UNITED STATES OF AMERICA.

To the above-named debtor, Farm Products Co., and to its attorney, Rupert V. Turnbull:

Please Take Notice that on Thursday, the 17th day of September, 1942, at the hour of 2 o'clock P.M. of said day, or as soon thereafter as counsel can be heard, at the office of the Supervising Conciliation Commissioner, Room 228, Federal Building, Spring and Temple Streets, Los Angeles, California, before the Honorable C. P. Von Herzen, Conciliation Commissioner for the County of Los Angeles, State of California, the United States of America, a secured creditor of the above named debtor, will move the above entitled court as follows:

1. To dismiss the within and above entitled proceedings and the Petition of the debtor therein, and to make its Order of Dismissal thereof.

2. To vacate, set aside and dissolve any and all stays [9] of proceedings, injunction, and/or restraining orders now in force or effect by virtue of or arising out of the filing or pendency of said proceedings and to make its order vacating and setting aside the same.

Said motion will be made on each and every of the following grounds:

1. That said debtor is not a farming corporation where at least 75 percentum of the stock is owned by actual farmers as so provided and defined by Section 75S(4)(a) of the Bankruptcy Act as amended.

2. That the owner of 75 percentum of the stock of said corporation debtor is not a farmer as defined by Section 75R of the Bankruptcy Act as amended.

3. That said owner of 75 percentum of the stock of said corporation debtor is neither an individual who is primarily bona fide personally engaged in producing products of the soil, or the principal part of whose income is derived from said farming activities.

4. That the above entitled court is without jurisdiction in this proceeding for the reason that 75 percentum of the stock is not owned by actual farmers, as provided in Section 75S(4)(a) of the Bankruptcy Act, in that the owner of said 75 percentum of the stock is not a farmer as defined by Section 75R of the Bankruptcy Act, as amended.

5. That this proceeding was not instituted by the debtor corporation in good faith and that it is impossible for said debtor corporation to rehabilitate itself or to offer a fair, just or equitable settlement or composition with its creditors.

Said motions and each of them will be based on each and every of the following: [10]

1. The affidavits of Charles A. Slack, Palaemon Bush, W. W. Powell, Earl D. Killion and Paul E. Williams hereto attached and filed of even date herewith.

2. The Memorandum of Points and Authorities attached hereto and Brief supporting said Motion.

3. All and singular the papers, files and records in the above entitled proceeding.

Dated: September 11, 1942.

LEO V. SILVERSTEIN

United States Attorney

JAMES L. CRAWFORD

Assistant United States

Attorney

MILDRED L. KLUCKHOHN

Assistant United States

Attorney

[Endorsed]: Filed Oct. 24, 1942. [11]

[Title of District Court and Cause.]

NARRATIVE STATEMENT OF TESTIMONY
BEFORE CONCILIATION COMMISSIONER

It is Hereby Stipulated by and between the parties hereto through their respective counsel that the following is a true narrative statement of the testimony produced before Conciliation Commissioner C. P. Von Herzen on September 17, 1942.

Mr. Turnbull (Attorney for the Farm Debtor) stated he desired to make a motion to strike certain affidavits.

Miss Kluckhohn (U. S. Attorney) stated she desired to move to dismiss the proceedings upon the ground that the Court had no jurisdiction in the matter, and would rely principally upon the affidavits on file. She then called as a witness J. L. Woolsey of the Division of Corporations of the State of California who testified that a permit was issued by the Department authorizing the issuance of the stock of the Farm Products Co. to Fred Mansur, in escrow, and that an escrow holder had been approved by the Department. That following request of the Farm Administration no further steps had been taken by the corporation and the stock had not been distributed. [12]

Miss Kluckhohn then stated that she relied upon the affidavits on file in support of her motion.

Mr. Turnbull then objected to the affidavit of Paul E. Williams on the ground that he was civilly dead, having been convicted in the Federal District

Court of Washington, having served a term at McNeil's Island, and never having been pardoned, and therefore not entitled to be heard as a witness.

The Court took the matter under submission.

FRED MANSUR

then called as a witness, testified as follows:

That he formerly lived in Los Angeles City, that he removed to the farm property of Farm Products Co. in Los Angeles County near the City of Compton, generally known as Dominguez Hill. That actual physical possession took place on May 7th or 8th, 1942. That the lease comprised 460 acres. That he and his wife moved into a place on the farm property with their household belongings. That he changed his voting place to this new precinct. That this was farm land evacuated by the Japanese.

That prior to this time he had been a practicing attorney in Los Angeles. That he closed his law office and turned unfinished matters over to another attorney. That after he was ousted from the farm project by the Farm Security Administration he returned to the office of the company in Los Angeles but did not resume the practice of law. That he and his wife continued to live on the farm property.

That a break occurred on June 10th with Paul Williams, his partner, and the Farm Administration ordered that said Paul Williams take charge

(Testimony of Fred Mansur.)

of the enterprise, and that said Fred Mansur have no further voice in the management.

That the work done by said Fred Mansur during this period was first incorporating the company, making application for Government loans, securing permit to issue stock, bringing [13] needed articles to the farm. That the man in charge of the actual field labor, and hiring of Mexican help was Mr. Reynolds. That there were foremen for the different sections of the farm. That the crops were vegetables; cabbage, beets, cauliflower, celery etc. That these crops had been planted, but were not ready to market, at the time Farm Security took charge.

That Farm Products Co. had no other activity than this farming project. It was all leased ground.

That Mr. Reynolds was a practical farmer. That Paul E. Williams claimed to have had farming experience in Imperial Valley. That he kept the company books and contacted buyers for future vegetable crops when they were matured.

That Fred Mansur was born in New Hampshire on a farm and had farm experience up to the time he was 20 years old. That when he moved to this farm enterprise it was with the intention of changing his occupation to that of a farmer.

Cross Examination

Fred Mansur testified that after he moved on to the farm, about the middle of May, he closed his offices.

He was asked if it wasn't true that between May 7th and August 17th he had been in his office every

(Testimony of Fred Mansur.)

day. He stated that he was ousted from the farming project on June 11th and then asked his former associate for the privilege of again using the office. Mr. Kegley agreed to this but said he also desired to use the office until after the primary campaign. That this is the legal office of the company and Fred Mansur occupied it as President of the Company, although permitted no actual management of the company.

Mr. Mansur testified that during this period he did no legal business other than that of the company, conferences with the Farm Security Administration officials, etc. [14]

The Commissioner asked Fred Mansur how much of his time was spent in the company's office between May 7th and August 17th. The answer was 4 or 5 days per week.

Miss Kluckhohn asked whose letterheads were used in writing letters for the company. The answer was that some times on plain stationery, but mostly on letterheads of Fred Mansur.

She asked Mr. Mansur if he had a thriving business and over objection, the witness was instructed to answer. The question was reframed and the witness asked if the purpose was not because the latter was unable to pay rent in town. Mr. Mansur answered that his wife had an independent income and he didn't have to worry about rent.

The witness was asked again what he did about the company affairs, and again repeated the different matters, calling attention to the fact that the

(Testimony of Fred Mansur.)

period involved was only a little over a month, from May 7th to June 8th, and that during that time the operation of the property was harmonious, and that he looked after the management of the company and did not interfere in the cropping of the farm.

The witness was asked how much he had received from the farming enterprise and stated \$190 was his recollection. He was asked about his income from the law business prior to this time. Later the witness testified that the \$190 he received was from loan funds.

The witness testified that while he had experience in farm work in New Hampshire, that he had no experience in growing vegetables in California. That the responsibility for the actual farming—hiring the help, and planting the ground devolved upon Mr. Reynolds, not upon Mr. Mansur or Mr. Williams.

The witness testified that he conferred with seed men about crops, and also conferred with Mr. Reynolds on this subject.

Miss Kluckhohn asked what was the witness' first contact [15] with Paul E. Williams. The witness testified that Williams was a client of Mr. Kegley, that the latter had endeavored to secure a pardon for Williams and was not successful. Miss O'Brien (Mr. Kegley's secretary) asked Mansur to try again to obtain this pardon. He admitted that he knew Williams was an ex-convict, and was willing to give him a break, because Williams said he

(Testimony of Fred Mansur.)

could not get employment or find any one who was willing to work with him.

Redirect

Mr. Mansur testified that as President of the Company he executed a mortgage to the Government, signed all checks, both payroll and purchase of materials.

The Commissioner then asked if any legal work of a private nature was transacted during the period before referred to and Mr. Mansur testified that none had been done and that he was not open for business of that nature as he expected to go on with this farming project.

He was asked if he gave the office building notice that he was leaving in May. The witness testified that he did, and that he paid one month in advance. That before this month was up he was ousted from the farm and asked Mr. Kegley for the privilege of coming back into the office.

The Commissioner then asked about the stock of the company and the witness testified that he agreed to undertake the farming of this land but that it would have to be on a corporation basis, not as a partnership; that he agreed to give Williams 50% of the stock, that the latter was still entitled to that share of the stock, although none had been actually issued.

Miss Kluckhohn introduced the original application and farm plan which was accepted by the Government, and the witness pointed out that the

(Testimony of Fred Mansur.)

plan allowed \$200 per month for living expenses and \$200 per month for operating expense. [16]

Miss Kluckhohn examined the witness as to assets shown on the application to the Corporation Commission for the issuance of stock, and the witness explained how they were obtained and how set up in the application.

Miss Kluckhohn called attention to the farming experience shown on the operating plan introduced in evidence, and that this referred to Paul E. Williams.

The Commissioner inquired if Mr. Anderson was repaid money advanced to the corporation. He was paid back.

Mr. Turnbull asked how many acres of lime beans were then planted. The witness testified there were approximately 34 acres and that they should produce approximately \$40,000.

W. D. REYNOLDS

called on direct examination.

Mr. Reynolds testified that he was subpoenaed by Mr. Mansur; that he was an employee of Farm Products Co.; that he was employed by Paul E. Williams; that he had never had any conferences with the directors of the company; that in matters of planting the responsibility rested upon Mr. Williams but that in many cases it was left to his (Reynold's) judgment, and that the latter's recom-

(Testimony of W. D. Reynolds.)

mendations were mostly followed; that he directed the production end of the farm.

Cross Examination

Mr. Reynolds testified that he was employed for wages; that he was told in a general way what to do; that he directed the men; that he was a practical farmer. He testified that Mr. Williams was his immediate superior. That he knew of farming experience of Mr. Williams prior to this particular enterprise, many years experience.

Dated this 29 day of December 1942.

LEO V. SILVERSTEIN

U. S. Attorney

WM. W. WORTHINGTON

Asst. U. S. Attorney

Attorneys for United States
of America.

FRED MANSUR

Attorney for Farm Debtor

[Endorsed]: Filed Dec. 30, 1942. [17]

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above entitled cause came on regularly to be heard before the Honorable C. P. Von Herzen, one of the Conciliation Commissioners in Bankruptcy

of this Court, in Los Angeles County, State of California, on the 17th day of September, 1942, at Room 228 Federal Building, Los Angeles, California, at which time and place was presented to the Court a Motion to Dismiss Proceedings and to Vacate Stay of Proceedings in the Federal Court by Secured Creditor, United States of America, appearing specially through its attorneys, Leo V. Silverstein, United States Attorney for the Southern District of California, and James L. Crawford and Mildred L. Kluckhohn, Assistant United States Attorneys. The debtor corporation appeared by its president, Fred Mansur, personally, and through its attorney, Rupert B. Turnbull. [18]

The motion was based upon all and singular the papers, files, and records in the above entitled proceedings, notice, affidavits and memorandum of points and authorities.

The motion of said secured creditor, United States of America, was based on the following grounds: 1. That said debtor is not a farming corporation where at least 75 per centum of the stock is owned by actual farmers, as so provided and defined by Section 75S (4) (a) of the Bankruptcy Act, as amended. 2. That the owner of 75 per centum of the stock of said corporation debtor is not a farmer as defined by Section 75R of the Bankruptcy Act, as amended. 3. That said owner of 75 per centum of the stock of said corporation debtor is neither an individual who is primarily

bona fide personally engaged in producing products of the soil or the principal part of whose income is derived from said farming activities. 4. That the above entitled Court is without jurisdiction in this proceeding for the reason that 75 per centum of the stock is not owned by actual farmers, as provided in Section 75S (4) (a) of the Bankruptcy Act, in that the owner of said 75 per centum of the stock is not a farmer as defined by Section 75R of the Bankruptcy Act, as amended.

After introduction of testimony by both sides, the said motion was argued by respective counsel and submitted to the Court for its decision, and the Court, being fully advised, now makes its Findings of Fact and Conclusions of Law, as follows:

FINDINGS OF FACT

I.

The Court finds that on August 24, 1942, the above named debtor, through its president, Fred Mansur, filed its petition under Section 75 of the Bankruptcy Act and alleged, "That your petitioner is a corporation organized and existing under and by virtue of the laws of the State of California, whose principal and only business is producing products of the soil and engaged in farming within the County of Los Angeles, State of California, in the district and division aforesaid. That all of the stockholders of your petitioner, Farm Products Co., are persons whose entire time is engaged and

whose incomes, and [19] each of them, are more than 75 per centum from their activities and endeavors in producing products of the soil and farming.”

“That such farming operations of your petitioner, Farm Products Co., and that each of its stockholders, occur in the County of Los Angeles, State of California, where your petitioner is operating a farm consisting of approximately 450 acres, more or less, cropping the same at the present time to various vegetables; that your petitioner is unable to meet his debts as they mature; that your petitioner desires to effect an extension of time to pay his debts under Section 75 of the Bankruptcy Act; that the schedules hereto annexed marked Exhibit “A”, and verified by his oath, contain a full and true statement of all of its debts, with the names and places of residence of its creditors, and that the schedule thereto annexed marked Exhibit “B”, and verified by his oath, contains an accurate inventory of all its property, both real and personal, and such further statements concerning said property as are required by law.”

II.

The Court finds that thereupon said petition was approved by the Court and it was ordered that said matter be referred to C. P. Von Herzen, one of the Conciliation Commissioners in Bankruptcy of this Court, to take such further proceedings therein as are required by said Act; that thereafter the first

meeting of creditors was held before said Conciliation Commissioner on the 17th day of September, 1942, at which time said motion to dismiss was made.

III.

The Court finds that it is true that Farm Products Co., debtor herein, is a corporation organized and existing under and by virtue of the laws of the State of California, whose principal and only business is producing products of the soil and is engaged in farming within the County of Los Angeles, State of California, in the district and division aforesaid, to-wit: at Compton, California. The Court further finds that such farming operations of debtor corporation occur in the County of Los Angeles, State of California, where it is operating a farm consisting of approximately 400 acres, cropping the same to vegetables; that on May 7, 1942, Fred Mansur moved his residence to Route 1, [20] Box 841, Compton, California, in the County of Los Angeles, State of California. The Court further finds that the allegation in farm debtor's petition is not true in that all of the stockholders of the farm products company are persons whose entire time is engaged and whose incomes, and each of them, are more than 75 per centum from their activities and endeavors in producing products of the soil and farming. The Court further finds that even if said allegation were true, such is not the proper manner in which to allege the jurisdictional fact that the debtor is a farm corporation.

IV.

The Court finds that the property of debtor corporation consists of personalty only, including livestock, farming equipment and machinery, leases, assignments, and other chattels, and crops, located or to be located on approximately 400 acres of land. That the growing crops consist of approximately 170 acres of land planted to various vegetables; that the care and harvest of said vegetable crops necessarily requires daily attention.

V.

The Court finds that on July 9, 1942, upon application made, a permit was issued by the Commissioner of Corporations authorizing the issuance of all shares of stock to Fred Mansur not in excess of 25,000. That an escrow holder was appointed and approved by the Commissioner of Corporations in the person of one George Ross, for the purpose of holding said stock. That to date no stock has actually been issued by debtor corporation. The Court further finds that Fred Mansur, President of Farm Products Co., owns at least a 50 per cent interest in said debtor corporation.

VI.

The Court finds that the primary and principal occupation of Fred Mansur, President of debtor corporation, and owner of at least a 50 per cent interest in said corporation, is not that of a farmer. The Court further finds that the primary and prin-

incipal occupation of Fred Mansur is that of an attorney at law, carrying on the legal business of said debtor corporation in the capacity of an attorney at law. The Court further finds that the only farming [21] experience that Fred Mansur has ever had was that obtained two or three years before reaching the age of twenty, on his father's ranch in the State of New Hampshire. That since reaching the age of twenty years, Fred Mansur has not engaged in farming activities nor has he since that time ever been personally physically engaged in the growing and harvesting of farm products and has, since 1917, up to the present time, been continuously, primarily and principally engaged in the practice of the law in the State of California. The Court finds that from May 7, 1942, to July 8, 1942, Fred Mansur, although residing with his family on the farm premises of debtor corporation, has spent most of his working hours of approximately five days a week in a business office at 117 West Ninth Street, Los Angeles, California, which office immediately before that time was occupied by Fred Mansur as an attorney at law, where he was daily actively engaged in the practice of law. The Court finds that during the period in question that Fred Mansur was at no time engaged in the manual operations of actual farming, that is, planting, raising, caring for and harvesting farm products on the premises belonging to debtor corporation. The Court further finds that the question as to what crops, when and how they shall be planted; when

and how the crops shall be harvested; to whom they shall be sold; for what price they shall be sold; and the preparation of land for planting, have at all times been determined by Paul E. Williams, Field Supervisor and actual farm manager and owner of the other one-half interest in said farming enterprise, and the foreman under his employ, Mr. Reynolds, who have at all times resided on said farming premises. That Mr. Reynolds has collaborated with Paul E. Williams in the actual management and supervision of said farming enterprise. The Court further finds that the labor policy has been determined solely by Paul E. Williams, who has, since the organization of said corporation, employed, discharged and managed all of the labor working on said premises; that the payroll has at all times been set up and the amount of wages determined by Mr. Williams.

VII.

The Court finds that the activities of Fred Mansur during the period in question consists solely of taking care of the legal work of said corporation [22] in the capacity of an attorney at law; that approximately five days per week has been spent by Fred Mansur during the period in question in a business office located at 117 West Ninth Street, Los Angeles, California, which was, immediately preceding this time, his private law office. The Court further finds that his activities on behalf of said defendant corporation have been specifically

those of incorporating the organization, arranging for loans with the Farm Security Administration and others, conferring with the owners of land regarding leases, signing all papers and documents relating to said corporation as president, and signing all checks as president of the corporation. The Court further finds that although Fred Mansur lives on the farm premises, he has at no time taken any personal physical part in the production of agri-products, but has spent the greater portion of the working hours in his office at 117 West Ninth Street, Los Angeles, California. The Court further finds that neither the entire time of Fred Mansur, nor any portion of his time, has ever been engaged in the production of products of the soil and farming. The Court further finds that the farming enterprise of said debtor corporation is operating on leased land and that Fred Mansur, upon entering said corporation, contributed neither funds nor farming equipment and owns no property held by said corporation; and that all that was contributed by Fred Mansur to the said debtor corporation was his legal services.

VIII.

The Court finds that during the period under examination, Fred Mansur received no income from said debtor corporation which was derived from the operations of the farming enterprise. That Fred Mansur received at least the sum of \$190.00 during said period as a personal advance for some of his

legal services and for the payment of his expenses in connection with his legal work for said debtor corporation; that said sum was wholly taken from the proceeds of a \$36,150.00 loan obtained from the United States Department of Agriculture, Farm Security Administration, and not from income derived from farming activities or the production of farm products. The Court further finds that the income of Fred Mansur is not more than 75 per centum from activity and endeavor in producing products of the soil and farming. That from the [23] beginning of 1942 up to May 7, 1942, Fred Mansur carried on a general practice as an attorney at law; that the principal part of the income of Fred Mansur was not derived from farming operations, or from the production of products of the soil and farming; that since the 7th day of May, 1942, the said sum of \$190.00 was received by said Fred Mansur from the loan proceeds and not from farming operations, and the payment was for expenses incurred and for legal services rendered for said debtor corporation.

IX.

The Court finds that the United States of America is a secured creditor of Farm Products Co., by virtue of a loan made to debtor corporation through the United States Department of Agriculture, Farm Security Administration on May 20, 1942. The Court further finds that the payment of said loan of \$36,150.00 is evidenced by a promis-

sory note secured by two chattel and crop mortgages which cover all of the property owned and operated by said debtor corporation.

The Court finds that due and proper notice of the motion hereinabove referred to, made on behalf of the secured creditor, United States of America, was given to and received by the debtor corporation prior to the hearing of said motion.

And From the Foregoing Findings of Fact, the Court Now Makes Its Conclusions of Law, as Follows:

CONCLUSIONS OF LAW

I.

The Court concludes that the debtor corporation is not a farming corporation where at least 75 per centum of the stock is owned by actual farmers, as so provided and defined by Section 75S(4) (a) of the Bankruptcy Act, as amended.

II.

The Court concludes that the owner of at least a one-half interest in said debtor corporation, or holder of 75 per centum of the stock of said [24] debtor corporation, is not a farmer, as defined by Section 75R of the Bankruptcy Act, as amended, in that he is neither an individual who is primarily bona fide personally engaged in producing products of the soil or the principal part of whose income is derived from said farming activities.

III.

The Court concludes that by virtue of the fact that the owner of at least one-half interest in said corporation, or the holder of 75 per centum of the stock of said debtor corporation, is not a farmer as defined by Section 75R of the Bankruptcy Act, as amended, the above entitled Court is without jurisdiction in these proceedings.

IV.

The Court concludes that the Motion to Dismiss Proceedings and to Vacate Stay of Proceedings in the Federal Court should be granted and that these proceedings should be dismissed, and that all proceedings pending in the Federal Court affecting this debtor should be allowed to go forward and all stays of such proceedings should be vacated.

That judgment be entered accordingly.

Done in Open Court this 14th day of October, 1942.

C. P. VON HERZEN

Conciliation Commissioner in
Bankruptcy, in and for the
County of Los Angeles.

[Endorsed]: Filed Oct. 24, 1942. [25]

[Title of District Court and Cause.]

ORDER DISMISSING PROCEEDINGS AND
VACATING STAY OF PROCEEDINGS IN
FEDERAL COURT

The above entitled cause came on regularly to be heard on the 17th day of September, 1942, before the Honorable C. P. Von Herzen, Conciliation Commissioner in Bankruptcy, in and for the County of Los Angeles, at Room 228 Federal Building, Los Angeles, California, at which time and place was presented to the court for its hearing and determination a Motion to Dismiss Proceedings and to Vacate Stay of Proceedings in the Federal Court by Secured Creditor, United States of America, appearing by and through its attorney, Leo V. Silverstein, United States Attorney for the Southern District of California, and James L. Crawford and Mildred L. Kluckhohn, Assistant United States Attorneys. The debtor appeared by its President, Fred Mansur, personally, and through its attorney, Rupert B. Turnbull. The motion of the secured creditor, United States of America, was based upon all and singular the papers, files and records in the above entitled proceedings, upon affidavits and memorandum of points and authorities attached thereto.

The motion was argued by respective counsel and submitted to the court for its decision, and the court being fully advised and having heretofore made and filed its Findings of Fact and Conclusions of Law, [26]

Now, Therefore, It Is Ordered, Adjudged and Decreed:

That the Motion to Dismiss Proceedings and to Vacate Stay of Proceedings in Federal Court by Secured Creditor, United States of America, be, and the same is, hereby granted and these proceedings be, and they are, hereby dismissed.

It Is Further Ordered, Adjudged and Decreed that the stay of proceedings affecting the action now pending before the Federal Court arising out of the pendency of this proceeding be and the same is hereby set aside and vacated, and any and all of such actions or proceedings heretofore stayed, be and the same is hereby permitted to go forward to final determination in the said Federal Court, and with enforcement of judgments or orders made, or which may be made, in any such Federal Court.

Done in Open Court this 14th day of October, 1942.

C. P. VON HERZEN

Conciliation Commissioner in
Bankruptcy, in and for the
County of Los Angeles.

[Endorsed]: Filed Oct. 24, 1942. [27]

[Title of District Court and Cause.]

AMENDED FARM DEBTOR'S PETITION FOR
REVIEW OF THE ORDER OF CONCILIA-
TION COMMISSIONER C. P. VON HER-
ZEN PURPORTING TO DISMISS THIS
PROCEEDING.

Comes now the Farm Debtor herein, Farm Products Co., a corporation, and petitions for a review of the order of C. P. Von Herzen, Conciliation Commissioner of this Court, for the County of Los Angeles, which order is dated on or about October 14, 1942, and was made by the Honorable C. P. Von Herzen acting as Conciliation Commissioner of this Court for the County of Los Angeles, and which order purports to dismiss this proceeding. Said order is in the following words, figures and form, to-wit:

“The above entitled cause came on regularly to be heard on the 17th day of September, 1942, before the Honorable C. P. Von Herzen, Conciliation Commissioner in Bankruptcy, in and for the County of Los Angeles, at Room 228 Federal Building, Los Angeles, California, at which time and place was presented to the court for its hearing and determination a Motion to Dismiss Proceedings and to vacate Stay of Proceedings in the Federal Court by Secured Creditor, United States of America, appearing by and through [28] its attorney, Leo V. Silverstein, United States Attorney for the South-

ern District of California, and James L. Crawford and Mildred L. Kluckhohn, Assistant United States Attorneys. The debtor appeared by its President Fred Mansur, personally, and through its attorney, Rupert B. Turnbull. The motion of the secured creditor, United States of America, was based upon all and singular the papers, files and records in the above entitled proceedings, upon affidavits and memorandum of points and authorities attached thereto.

The motion was argued by respective counsel and submitted to the court for its decision, and the court being fully advised and having heretofore made and filed its Findings of Fact and Conclusions of Law,

Now, Therefore, It Is Ordered, Adjudged and Decreed:

That the Motion to Dismiss Proceedings and to Vacate Stay of Proceedings in Federal Court by Secured Creditor, United States of America, be and the same is, hereby granted, and these proceedings be, and they are, hereby dismissed.

It Is Further Ordered, Adjudged and Decreed, that the stay of proceedings affecting the action now pending before the Federal Court arising out of the pendency of this proceeding be and the same is hereby set aside and vacated, and any and all of such actions or proceedings heretofore stayed, be and the same

is hereby permitted to go forward to final determination in the said Federal Court, and with enforcement of judgments or orders made, or which may be made, in any such Federal Court.

Done in Open Court this 14th day of October, 1942.

C. P. VON HERZEN

Conciliation Commissioner in
Bankruptcy in and for the
County of Los Angeles." [29]

Your petitioner feeling aggrieved at the order dismissing this proceeding, hereby petitions for a review of said order or orders so dismissing, and prays that the same be reviewed by a judge of this court.

Petitioner alleges that said orders complained of are in error in this, that the farm debtor herein is a farmer within the meaning of Section 75 of the National Bankruptcy Act, and the dismissal of this proceeding on the ground that the said corporation does not qualify within the meaning of Section 75 of the Bankruptcy Act is contrary to fact and contrary to law. That said farm debtor was organized and incorporated at the request of the United States Government to take over and operate lands of evacuated Japanese Nationals. That the sole object and purpose of the farm debtor was to farm lands previously farmed by said Japanese. That all the stockholders of the Farm

Debtor were persons giving all their time to such business and as such were farmers. That more than 75% of the stock of the debtor, to-wit, all of the same was held and owned by two persons, Paul E. Williams and Fred Mansur, who devoted all of their time exclusively to the affairs of the farm debtor and were farmers.

That the Conciliation Commissioner erred in dismissing this proceeding in that the order of the said Commissioner is contrary to law and against law.

Wherefore your petitioner feeling aggrieved at said order of dismissal, prays that the proper certificate be made by C. P. Von Herzen, or by his successor in office, and that the record in this proceeding be transmitted to a Judge of the District Court in the manner provided by law. The farm debtor hereby offers to pay and tenders such sum as may be necessary to prepare the record in accordance with the procedure required by law, and pursuant to the rules and customs of this court.

FARM PRODUCTS CO.,

a corporation,

By FRED MANSUR

President.

RUPERT B. TURNBULL

Attorney for Debtor.

[Endorsed]: Filed Nov. 12, 1942. [30]

In the District Court of the United States in and
For the Southern District of California

No. 41247-RJ

In the Matter of
FARM PRODUCTS CO.,
Debtor.

JUDGMENT AFFIRMING ORDER OF CON-
CILIATION COMMISSIONER DISMISS-
ING PROCEEDINGS IN BANKRUPTCY
AND VACATING STAY IN CIVIL AC-
TION.

A review of the Order of the Conciliation Commissioner dated the 14th day of October, 1942, Dismissing the Proceedings therein, and Vacating Stay of Proceedings in the case of United States of America, plaintiff vs. Farm Products Co., defendant, No. 2371-RJ, Civil, in the United States District Court for the Southern District of California, having duly come on for hearing before the United States District Court for the Southern District of California, the Honorable Ralph E. Jenney, Judge, presiding: and the matter having been submitted upon briefs without oral argument, and the Court, after due consideration, having on the 23rd day of November, 1942, rendered its opinion that the said Order of the said Conciliation Commissioner be in all respects affirmed.

It is Hereby Ordered, Adjudged and Decreed that the Order of the Conciliation Commissioner, Honorable C. P. Von Herzen, dated the 14th day

of October, 1942, Dismissing Bankruptcy Proceedings therein and Vacating The Stay in the case of the United States of America, plaintiff, vs. Farm Products Co., defendant, No. 2317-RJ, Civil, now pending in the [31] United States Court for the Southern District of California, Central Division be

affirmed.

Dated this 24th day of November, 1942.

RALPH E. JENNEY

United States District Judge.

Presented by:

LEO V. SILVERSTEIN,

United States Attorney.

JAMES L. CRAWFORD,

Asst. United States Attorney.

WM. W. WORTHINGTON,

Asst. United States Attorney.

Approved as to form pursuant to Rule 8.

RUPERT B. TURNBULL,

Attorney for Debtor.

Judgment entered Nov. 24, 1942. Docketed Nov. 24, 1942. C. O. Book 12, Page 598. Entered in Bankruptcy Docket 11-24-42. Edward L. Smith, Clerk. By L. B. Figg, Deputy.

[Endorsed]: Filed Nov. 24, 1942. [32]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the United States of America and to Leo V. Silverstein, Esq., James L. Crawford, Esq., and Wm. W. Worthington, Esq., its attorneys:

You and each of you will please take notice that Farm Products Co., a corporation, debtor in the above matter, is appealing from an order of the above entitled Court made and entered in the minutes of said Court on the 24th day of November, 1942, whereby the order of the Conciliation Commissioner dismissing the above entitled proceeding was affirmed, and from the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit.

December 2, 1942.

FRED MANSUR

Attorney for Farm Products
Co.

12-7-42 Mailed copy to Leo V. Silverstein, U. S.
Attorney, T. H.

[Endorsed]: Filed Dec. 4, 1942. [33]

[Title of District Court and Cause.]

COST BOND ON APPEAL

National Automobile Insurance Company

Home Office—Los Angeles

Know All Men by These Presents:

That we, Farm Products Co., as Principal, and the National Automobile Insurance Company, a corporation organized and existing under the laws of the State of California and authorized to transact a surety business in the State of California, as Surety, are held and firmly bound unto the United States of America, in the full and just sum of Two Hundred and Fifty Dollars (\$250.00), to be paid to the said United States of America, its Attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of December, in the year of our Lord One Thousand Nine Hundred and Forty-Two.

Whereas, on the 24th day of November, 1942, a Judgment was entered in the District Court of the United States, Southern District of California, Central Division, in the above entitled case and as the Farm Products Co., Debtor, has filed notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in the State of California.

Now, Therefore, the condition of the above obligation is such that if Farm Products Co., shall pros-

ecute its appeal to effect, and answer all costs if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, then the above obligation to be void; else to remain in full force and virtue.

Acknowledge before me the day and year first above written.

[Seal] FARM PRODUCTS CO.
By FRED MANSUR,
President
Principal
NATIONAL AUTOMOBILE
INSURANCE COMPANY

[Seal] By: WILLIAM E. FORTNEY
Attorney-in-Fact

Examined and recommended for approval as provided in Rule #13.

WM. W. WORTHINGTON

This recognizance shall be deemed and construed to contain the "consent and agreement" for summary judgment and execution thereon mentioned in Rule #13 of the District Court.

The Premium charged for this bond is \$10.00 per annum.

I hereby approve the foregoing bond.

Dated the 5th day of Dec., 1942.

RALPH E. JENNEY,
Judge

State of California,
County of Los Angeles—ss.

On this 3rd day of December, in the year 1942, before me, Helengene Duffin a Notary Public in and for said County and State, personally appeared William E. Fortney, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the National Automobile Insurance Company, and acknowledged to me that he subscribed the name of the National Automobile Insurance Company thereto as principal, and his own name as Attorney-in-fact.

[Seal] HELENGENE DUFFIN
Notary Public in and for said County and State.
My Commission Expires Dec. 2nd, 1945.

[Endorsed]: Filed Dec. 5, 1942. [34]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

Comes now Farm Products Co., a California corporation, debtor in the above-entitled proceeding and appellant therein, and hereby submits a concise statement of points on which it intends to rely on the appeal of the above-entitled proceedings as follows:

1. That the above-entitled District Court erred in affirming an order of the Conciliation Commis-

sioner dismissing proceedings in bankruptcy and vacating a stay order in a civil action between the parties herein.

2. The Conciliation Commissioner erred in finding "that the allegations in farm debtor's petition is not true in that all of the stockholders of the farm products company are persons whose entire time is engaged and whose incomes, and each of them, are more than 75 per centum from their activities and endeavors in producing products of the soil and farming."

That the Commissioner erred in the following: "The Court finds that the primary and principal occupation of Fred Mansur, President of debtor corporation, and owner of at least a 50 per [35] cent interest in said corporation, is not that of a farmer." Appellant contends that the record shows that the entire time of Fred Mansur was devoted to the farming enterprise, and that his activities were those of a farmer.

3. The Conciliation Commissioner erred in vacating stay in pending Civil Action.

Dated: December 11, 1942.

FRED MANSUR

Attorney for Appellant.

[Endorsed]: Filed Dec. 30, 1942. [36]

[Title of District Court and Cause.]

STIPULATION AS TO RECORD

It is hereby stipulated by and between the parties hereto through their respective counsel that the following hereinafter enumerated parts of the record, proceedings and evidence be included in and shall constitute the record on appeal herein pursuant to Rule 75 (F) of the Rules of Civil Procedure for the District Courts of the United States.

1. Petition of Debtor.
2. Special Appearance of United States of America.
3. Statement of Testimony Before Commissioner.
4. Findings of Fact and Conclusions of Law.
5. Order Dismissing Proceedings.
6. Petition for Review.
7. Commissioner's Certificate of Record on Review.
7. Judgment of District Court Affirming Order of Conciliation Commissioner.
8. Notice of Appeal.
9. Copy of Bond.
10. Statement of Points on Which Appellant Intends to Rely. [37]
11. Designation of Contents of Record on Appeal.
12. This Stipulation.
13. Certificate of Clerk Authenticating the Record.

Dated : December 26, 1942.

LEO V. SILVERSTEIN,

U. S. Attorney

WM. W. WORTHINGTON

Asst. U. S. Attorney

Attorneys for Appellee

United States of America

FRED MANSUR

Attorney for Appellant.

[Endorsed]: Filed Dec. 30, 1942. [38]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 38, inclusive, contain full, true and correct copies of: Petition of Farm Products Co. under Section 75 of the Bankruptcy Act; Certificate of Record on Review; Special Appearance; Notice of Motion to Dismiss Proceedings and to Vacate Stay of Proceedings in Federal Court by Secured Creditor, United States of America; Narrative Statement of Testimony Before Conciliation Commissioner; Findings of Fact and Conclusions of Law; Order Dismissing Proceedings and Vacating Stay of Proceedings in Federal Court; Amended Farm Debtor's Petition for Review of The Order of Conciliation Commissioner C. P. Von

Herzen Purporting to Dismiss This Proceeding; Judgment Affirming Order of Conciliation Commissioner Dismissing Proceedings in Bankruptcy and Vacating Stay in Civil Action; Notice of Appeal; Cost Bond on Appeal; Statement of Points on which Appellant Intends to Rely and Stipulation as to Record which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the fees of the clerk for comparing, correcting and certifying the foregoing record amount to \$6.95, which amount has been paid to me by the Appellant.

Witness my hand and the seal of the said District Court this 12 day of January, 1943.

[Seal] EDMUND L. SMITH,
Clerk

By THEODORE HOCKE,
Deputy Clerk.

[Endorsed]: No. 10345. United States Circuit Court of Appeals for the Ninth Circuit. Farm Products Co., a corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed January 14, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of
Appeals for the Ninth Circuit

No. 10345

In the Matter of
FARM PRODUCTS CO.,
Debtor.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY AND DES-
IGNATION OF PART OF RECORD SUB-
MITTED FOR CONSIDERATION ON AP-
PEAL.

Farm Products Co., as appellant and Debtor in the above-entitled matter, hereby incorporates by reference herein its Statement of Points on which Appellant Intends to Rely, which was filed in the District Court of the United States, Southern District of California, Central Division, and which is part of the record on appeal of said trial court in said proceeding.

Further, said Farm Products Co. hereby designates the parts of the record on appeal in said proceeding which it thinks are necessary for the consideration thereof as follows:

1. Petition of Farm Debtor.
2. Special Appearance of United States of America.
3. Statement of Testimony Before Commissioner.
4. Findings of Fact and Conclusions of Law.

5. Order Dismissing Proceedings.
6. Petition for Review.
7. Commissioner's Certificate of Record on Review.
8. Judgment of District Court Affirming Order of Conciliation Commissioner.
9. Notice of Appeal.
10. Statement of Points on Which Appellant Intends to Rely.
11. Designation of Contents of Record on Appeal.
12. This Statement of Points on Which Appellant Intends to Rely and Designation of Parts of Record Submitted for Consideration on Appeal.
13. Stipulation Regarding Record on Appeal.
14. Clerk's Certificate of Said Record.

Dated: January 11, 1943.

FRED MANSUR

Attorney for Farm Products
Co.

Appellant and
Farm Debtor.

Rec'd. copy of Statement of Points this 12th day
of January, 1943.

LEO V. SILVERSTEIN

U. S. Attorney

WM. W. WORTHINGTON

Asst. U. S. Attorney

[Endorsed]: Filed Jan. 14, 1943.